CAL-NOR,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 00-61-A
	:	
ASSISTANT SECRETARY - INDIAN AFFAIRS,	:	
	:	
Appellee	:	February 27, 2001

This is an appeal from a February 4, 2000, notice of termination of a May 8, 1991, loan guaranty agreement between CAL-NOR and the Bureau of Indian Affairs (BIA). The notice was issued by the Assistant Secretary - Indian Affairs but stated that it could be appealed to the Board. 1/ For the reasons discussed below, the Board affirms the Assistant Secretary's decision.

Pursuant to Appellant's application to become an approved lender under 25 C.F.R. Part 103, BIA executed the loan guaranty agreement at issue here. 2/ The agreement authorized Appellant to participate as a lender in BIA's loan guaranty program.

On September 30, 1991, the Acting Director, Office of Trust and Economic Development, BIA, wrote to Appellant, stating:

1/ Under 25 C.F.R. § 2.6(c), a decision made by the Assistant Secretary is final for the Department unless the decision provides otherwise.

2/ A partial copy of the agreement is included in the record. For the most part, it is illegible. However, the form number (BIA Form 5-4753 (Apr. 1975)), title (LOAN GUARANTY AGREEMENT), and signature of Appellant's representative (Ivan C. Bryant) are legible. Although the text is not legible, the Board has some familiarity with BIA's standard loan guaranty agreement from earlier appeals.

25 C.F.R. Part 103 governs BIA loan guaranty, insurance, and interest subsidy programs. On Jan. 17, 2001, BIA published a revision of this part. 66 Fed. Reg. 3861 (Jan. 17, 2001). The revision is scheduled to go into effect on Apr. 17, 2001. 66 Fed. Reg. 8898 (Feb. 5, 2001).

> This is in response to your letter of September 23 wherein you make clear that you have not requested a loan guaranty. You further state that you do not intend to seek a guaranteed loan from the BIA under the Indian Financ[ing] Act of 1974 * * * now or in the future.
>
> Pursuant to paragraph 27 of our loan guaranty agreement with you, we are giving you notice of the termination of the agreement. Ten days from your receipt of this letter, the loan guaranty agreement will have no force nor effect.

The Acting Director's letter included a statement of Appellant's right to appeal to the Board, and instructions concerning how an appeal was to be filed. Appellant did not appeal.

On January 21, 2000, Appellant wrote to the Assistant Secretary, requesting reconfirmation of the May 8, 1991, loan guaranty agreement. The Assistant Secretary responded on February 4, 2000, stating:

> Your letter states that "CAL-NOR was never notified of any problem or challenge to this Agreement." On September 30, 1991, we notified Mr. Ivan Bryant of CAL-NOR that we were terminating our loan guaranty agreement with CAL-NOR as provided in paragraph 27 of the agreement. * * * To ensure that the Agreement is terminated, we are again giving you written notice of the termination of the Guaranty Agreement between CAL-NOR and [BIA] dated May 8, 1991, * * *. [3/]
>
> If your letter is construed to constitute a request for new approved lender status in our Loan Guaranty Program, we are declining your request. We do not find CAL-NOR eligible under the criteria set for lenders in 25 CFR 103.9.

Appellant appealed this decision to the Board. Briefs were filed by Appellant and the Assistant Secretary.

In its filings with the Board, Appellant indicates that its objective is, and always has been, to issue insured loans, rather than guaranteed loans. While its arguments are not entirely clear, Appellant does not seem to dispute the fact that the agreement it entered into with BIA was a loan guaranty agreement, not a loan insurance agreement. Rather, Appellant appears to be contending that its loan guaranty agreement gave it the right to issue insured loans. It

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3/ Evidently, BIA had no proof that Appellant received the Sept. 30, 1991, decision. Under 25 C.F.R. § 2.6(b), that decision should have become effective "when the time for filing a notice of appeal [i.e., 30 days from receipt of the decision by Appellant] has expired and no notice of appeal has been filed."

argues, for instance, that its "RIGHT to give Insured loans pursuant to 25 CFR 103.12" 4/ has been "[w]rongfully terminated." Appellant's Opening Brief at 2.

The Assistant Secretary argues that Appellant never had any such right because it never had a loan insurance agreement. 5/

It appears from the record that, upon receiving Appellant's application for "approved lender" status, BIA furnished Appellant with its loan guaranty agreement form, i.e., Form 5-4753, in the belief that Appellant wished to issue guaranteed loans. To the extent Appellant may now be contending that BIA erred by furnishing the wrong form, the Board finds that Appellant shares responsibility for the error. Appellant's November 19, 1990, letter to BIA indicates that Appellant was seeking to participate in the loan guaranty program. Among other things, the letter cites 25 C.F.R. § 103.11, "Guaranteed loans," but not 25 C.F.R. § 103.12, "Insured loans." Further, Appellant's representative signed an agreement clearly labelled "LOAN GUARANTY AGREEMENT," although 25 U.S.C. § 103.12, upon which Appellant now relies, consistently refers to "insurance agreements."

As an entity doing business with the Government, Appellant was responsible for familiarizing itself with the regulations governing the program in which it sought to participate. E.g., Jackson v. Portland Area Director, 35 IBIA 197, 201 (2000). Further, to the extent that BIA erred by furnishing the wrong form, that error did not grant Appellant any rights not authorized by law. E.g., Billco Energy v. Albuquerque Area Director, 35 IBIA 1, 7 (2000).

There is no evidence that Appellant ever had a loan insurance agreement with BIA. Appellant has failed to show that it had a right to issue insured loans under 25 C.F.R. § 103.12, let alone that such a right was terminated.

4/ 25 C.F.R. § 103.12, Insured loans, provides:

"(a) Eligible lenders, as prescribed in § 103.9 * * * may make insured loans * * * pursuant to the provisions of an insurance agreement entered into between the Commissioner and the lender. Insurance agreements may be entered into by the Commissioner and eligible lenders which will authorize the lenders to make insured loans to eligible applicants without the Commissioner's approval of each individual loan. Separate insurance agreements will be issued by the Commissioner for those loans which require the issuance of individual insurance agreements.

"(b) Lenders will make loans only when there is a reasonable prospect of repayment. The insurance on any loan made under the provisions of an insurance agreement will not be effective until receipt of the insurance premium by the Commissioner."

5/ The Assistant Secretary furnishes a copy of the loan insurance agreement form (BIA Form 5-4754 (Apr. 1975)) that was available for use at the time of Appellant's application.

The Assistant Secretary notes that Appellant's loan guaranty agreement was terminated under paragraph 27 of the agreement, which provides: "Termination. Either party hereto, by giving not less than ten (10) days prior written notice by certified mail to the other party may terminate the provisions of this agreement; such termination shall not apply to any loan previously authorized by BIA hereunder." 6/

This provision does not require that a party give any reason at all for terminating the agreement. Even so, the Assistant Secretary's February 4, 2000, letter indicates that he found Appellant unqualified to participate as a lender in BIA's loan guaranty program.

Citing, inter alia, 25 U.S.C. § 1488 and 25 C.F.R. § 103.9(a), the Assistant Secretary argues that BIA's approval of a lender under the loan guaranty program is a matter within the discretion of BIA.

25 U.S.C. § 1488 provides in relevant part: "Loans guaranteed hereunder may be made by any lender satisfactory to the Secretary." 25 C.F.R. § 103.9(a) provides in relevant part: "Loans made by any lender regularly engaged in making loans, having the capacity to accept and process applications and service loans, and which lender is satisfactory to the Commissioner, may be guaranteed."

The Board agrees that, under these provisions, the determination of whether or not to permit a lender to participate in the loan guaranty program is a matter within the discretion of BIA. Cf. Blackfeet National Bank v. Director, Office of Economic Development, 34 IBIA 240, 241 (2000) (Decisions as to whether to approve requests for loan guaranties are committed to the discretion of BIA). Given the broad language of paragraph 27 of the loan guaranty agreement, the Board concludes that BIA's discretionary authority in this regard includes the authority to terminate an existing agreement when it concludes that the lender is, or has become, unsatisfactory.

An appellant who challenges a BIA discretionary decision bears the burden of showing that BIA did not properly exercise its discretion. E.g., Blackfeet National Bank. Appellant has failed to carry that burden here.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Assistant Secretary's February 4, 2000, decision is affirmed.

Anita Vogt	Kathryn A. Lynn
Administrative Judge	Chief Administrative Judge

6/ The Assistant Secretary, noting the illegibility of the loan guaranty agreement in the record, provides a transcription of this paragraph. Assistant Secretary's Brief at 4 n.4.